



ORIGINAL

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To the Parties to the 1983 Cable Royalty Distribution Proceeding:

The Tribunal is pleased to welcome J.C. Argetsinger. Commissioner Argetsinger was sworn into office October 28, 1985. He is filling the position left vacant by Commissioner Douglas Coulter and will serve until September 27, 1991.

Commissioner Argetsinger has indicated that he plans to participate in the rendering of a decision in the 1983 Cable Royalty Distribution Proceeding. The Tribunal has reviewed the comments which were filed by the parties on June 4, 1985 regarding the participation of a later-appointed commissioner in an ongoing distribution proceeding. The Tribunal believes that the participation of Commissioner Argetsinger is proper for the following reasons:

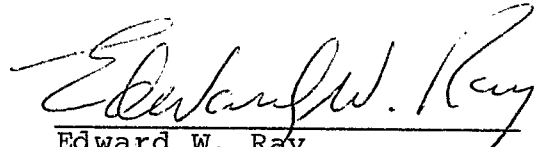
1. It was the Tribunal's conclusion, stated in the May 12 letter to the members of the bar who practice before the Tribunal, that a deciding officer does not have to be present to hear all the testimony, except when the demeanor and credibility of the witness is of such a substantial factor that the absence of the deciding officer would be a denial of a fair hearing. We received no objections to this conclusion, and in fact, the comments of NAB and PBS strongly supported the conclusion. In reviewing the testimony to date, the Tribunal does not consider that any witness' demeanor and credibility were of "such substantial factor."
2. Comments filed by the Program Suppliers and the Joint Sports Claimants objected to a later-appointed commissioner hearing some of the parties' presentations, but not all. For example, if a commissioner had come in in August, he would have heard the Music, Devotional and Canadian cases, but would have missed the Program Suppliers, Sports, PBS and NAB cases. However, the Tribunal is at a point where all the direct case presentations have been made, and before any rebuttal case presentation has been given. Therefore, all parties are on an equal footing, and the situation the Program Suppliers and the Joint Sports Claimants anticipated will not occur.
3. The Music Claimants felt that their testimony has such aural and visual impact that their case would have less effect if the later-appointed Commissioner were not present. However, the Tribunal disagrees with the Music Claimants that a lesser effect

is a denial of a fair hearing. All Commissioners will read the direct cases, the transcripts and view the audio-visual materials of all parties.

4. NAB suggested that if a commissioner is appointed during or after the hearings are concluded, but before a decision is reached, that the Tribunal should adopt a two-part procedure: (1) a written summary of the record as of that date; and (2) a special oral presentation of each party's case. The Tribunal believes that NAB's recommended procedures are unnecessary. The written direct cases of each party represents readily-available summaries for Commissioner Argetsinger, and the Tribunal has already scheduled special oral argument at the conclusion of Phase I in which each party will get 20 minutes to summarize its case. The Tribunal believes that this will be sufficient to effect what NAB recommends.

5. The Tribunal adopted procedural rules for resolving deadlock between the two sitting Commissioners. The participation of Commissioner Argetsinger in the rebuttal part of Phase I and in all of Phase II will obviate the need for those procedural rules. Furthermore, the Tribunal had anticipated further difficulties in resolving a deadlock, should one occur, in rendering a final determination in the proceeding. The Tribunal is of the belief that deadlock will be avoided with the participation of Commissioner Argetsinger.

For these reasons, Commissioner Argetsinger will participate in the 1983 Cable Royalty Distribution Proceeding.


Edward W. Ray
Acting Chairman

Date: October 29, 1985

ORAL RULINGS

Before we begin the direct case of PBS, there are several filings submitted by PBS on which the Tribunal would like to rule.

First, PBS submitted an amended prehearing statement on June 17, 1985.

All parties were given an opportunity to object to the filing by June 28, 1985.

No objections were received. We have reviewed the filing and find that it is in accordance with our Order, and the prehearing statement is accepted.

Second, in compliance with our ruling on evidentiary objections of June 14, 1985, PBS submitted to the Tribunal the underlying documentation of the McHugh and Hoffman survey. We received no request from any of the parties for an analysis of the data. As we stated in our Order, the underlying documentation will not be received as evidence, and therefore, PBS may come by our offices at any time to pick up the data.

Third, we received two amendments to PBS' direct case. The first was filed June 6, 1985. The second was filed June 19, 1985. We received no objections from any of the parties regarding the amendments. We will, accordingly, accept PBS' two amendments, and the testimony today will proceed according to PBS' amended case.



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SCHEDULE -- PHASE I AND PHASE II

The Tribunal adopts the following schedule for the completion of Phase I and for Phase II Hearings in the 1983 Cable Royalty Distribution Proceeding.

PHASE I

January 15, 1986	Phase I Proposed Findings Due
January 21, 1986	Phase I Reply Findings Due
January 24, 1986*	Oral Argument-(20 minutes per claimant group)

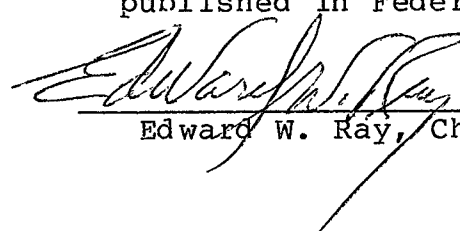
*Hearing will be held at Commodity Future Trading Commission,
2033 K Street, Room 538, from 1:30 p.m. to 4:30 p.m.

February 5, 1986	Phase I Preliminary Dermination published Federal Register
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PHASE II

February 18, 1986	Exchange Phase II Written Direct Case
February 18-24, 1986	Parties resolve objections among themselves
February 26, 1986	Written submittal of disputed requests to CRT
March 4, 1986	CRT to rule on any disputed requests.
March 6, 1986	Phase II Hearings Commence
March 21, 1986	Phase II Hearings Conclude
March 28, 1986	Proposed Phase II Findings Due
April 2, 1986	Reply Phase II Findings Due
April 15, 1986	Final Determination to be published in Federal Register

January 13, 1986


Edward W. Ray, Chairman

TESTIMONY OF WITNESSES

MPAA

1. Jack Valenti - MPAA President

Purpose is to give an overview of the case and state why a majority of the 1983 cable rate payments should be allocated to program syndicators. He provides the following reasons:

- a. MPAA's and Joint Sports Claimants' agreement upon a fair share of the cable royalty fund has eliminated some of CRT's difficult questions concerning distribution proceeding.
- b. Syndicated programs and films require cast expenditures of money and talent, and no other category approaches this combination.
- c. Harm-benefit analysis requires a majority of royalties be allocated to program syndicators.
- d. All MPAA members and program syndicators have a fair and equitable standing in the distribution proceedings. All agree on usage of Nielsen ratings.

2. Henry Geller

Mr. Geller's background in communications law and policy (34 years), with an emphasis on cable tv is given to show competence. The testimony then gives a history of the 1972 cable Report and the intentions of its drafters. Mr. Geller proceeds to explain the Report and the importance of exclusivity.

3. Jon A. Baumgarten

Competence of the witness is demonstrated through general background and experience in copyright law. The scope of the testimony is to discuss whether tv broadcast stations are entitled to royalties as copyright owners of syndicated programs under 17 U.S.C. 111(d)(4). The conclusions are that tv stations are not exclusive licensees, are not copyright owners and are therefore, not entitled to royalties for transmission of syndicated programs. To substantiate these conclusions he cites:

- a. Prior CRT determinations
- b. Decision of the Court of Appeals in CRT's determinations
- c. Legislative history
- d. Administrative history

e. Divisibility under the Copyright Act

f. Chapter 5 of the Copyright Act

4. Paul Lindstrom - Vice President of Nielsen Home Video Index

Testimony provides educational and employment history to show expertise in area. Scope is to show that A.C. Nielsens Co. is qualified to provide the yearly study for MPAA's use with the CRT by giving the companies history, statute in the industry, resources and qualifications.

5. Donald R. Koehler - Nielsen Employee

Purpose is to show how MPAA and A.C. Nielsen have been working together for several years on reports commissioned by the MPAA to provide the number of broadcast quarter-hours and estimated distant cable households viewing a predefined sample of 117 broadcast stations. Testimony also provided an explanation of the study ranging from methodology to basis of stations and household selection.

6. Marsha E. Kessler - MPAA Employee

Testimony begins with a showing of competence and proceeds to show the validity of Nielsen's study and how the factors use were ascertained.

7. Thomas A. Larson - President of Control Data Corp.

Purpose is to illustrate companies (CDC) involvement with the statements of account to the Licensing Division of the Library of Congress by showing where MPAA got the data used for the station sample for the 1983 Nielsen Special Report. The entire process is discussed in detail, to legitimize the data and consequently legitimize Nielsens Special Report.

8. Allen R. Cooper - Vice President Tech. Eval. and Planning,
MPAA

Scope is to quash criticism of the special studies done by Nielsen for MPAA. This is done by addressing those areas of criticism from previous studies.

9. John Redall - GM Viacom Cablevision

Educational and employment history is given to add credence to his testimony and his company. Purpose is to give opinion as to relative value of movies, series and sports versus local news and local public affairs in terms of attracting and retaining cable subscribers. Conclusion is that there is an overwhelming superiority of movies, sports and series programs over other types of programs. Local programs have little, if any, value when transported to a distant market.

JOINT SPORTS CLAIMANTS

1. David J. Stern, Commissioner of the NBA

Testimony begins with a summary of qualifications in cable tv. The purpose is to show the negative impact of distant signal carriage and the uniqueness of sports leagues in that they can only prosper to the extent that its individual clubs succeed. (Support marketplace approach).

2. Paul I. Bortz, Managing Director of Brown, Bortz & Coddington

Scope of testimony is to show that sports was the most valued distant signal network program category among cable operators during 1983 and therefore conclude that they should get high fees and make operators pay more. The testimony explains surveys showing high value of live professional and college sports over other categories and also provides the research methodology.

3. Dr. Peter H. Lemieux, Manager Director of Information Architects

Purpose is to give expert testimony on the makeup of the 1983 cable royalty pools -- specifically from the cable operator's payment of royalties attributable to: 1) the base rates in Section 111 of the Copyright Act and 2) the 3.75 rate for signals added or upgraded as a result of FCC deregulation of the cable industry. the witness provides two studies from which he got his results.

4. Richard Loftus, President, Trident Communications Group

Testimony on the outset provides substantial information concerning his background in the cable industry. Scope is to tell how sports is the most desirable of distant signal programming for cable operators. Says that sports is essential to their success. Live programming creates extraordinary excitement. Witness believes that sports make the Superstation go and attract and keep subscribers.

PUBLIC BROADCASTING SERVICE

1. Lawrence K. Grossman, President, Chief Executive Office of PBS

Testimony begins by referring to Grossman's experience and years in the communications industry to legitimize him as a witness. The scope of the testimony is to show the small amount of capital available to PBS and to show that there is a necessity for a tv medium which strives to meet the needs of local viewers (communities).

The scope is illustrated by comparing and contrasting PBS with networks. The following^{are} a few examples:

a. PBS does not have advertisers to fund programs like the networks, the member station have control of the funds they generate.

b. Network affiliates are owned and operated by commercial business establishments for profit. Most public television stations are owned by non-profit organizations.

c. PBS distributed programs are used by local stations much less than the networks distribute programs through its affiliates. PBS will tape programs to fit their local program schedule and purpose.

The testimony proceed with several other examples comparing and contrasting PBS and network programming with the intention to show the necessity of PBS and to show PBS'S lack of funds.

2. Ossie Davis, Actor, Writer, Producer

Testimony is to show how public tv has provided him with greater opportunities to develop program concepts than has commercial tv (value of public tv).

3. Suzanne Weil - Senior Vice President, Programming of PBS

Testimony is to show the purpose of PBS. She states that PBS' purpose is to "seek out alternative programs and programming areas which the commercial tv business does not serve, and to reach various segments of the audience and serve the respective needs, interests and tastes of a wide variety of those segments of the American viewing public." PBS' purpose is not to secure large audience ratings for individual programs but to ascertain a cumulative audience reach.

4. Steven R. Vedro, Asst. Director of University of Wisconsin-Extension, Telecommunications Div.

Purpose is to give an example of the growth of cable system for a public tv station testimony discusses the success of programming, that there is not duplication of programs and that expansion has added diversity (value).

5. Aida Barrera - Executive Producer of TV shows Targeted for Mexican-American, Puerto Rican and cuban children

Testimony illustrates how Public Television is meeting the needs of groups that are not met by commercial tv.

6. John P. Madigan, Jr., Vice President, Corporate Commission for the Chubb Group of Insurance Co.

The company is an underwriter of public tv and strives to show that the corporate view of Public Television is a positive one because their affiliation (sponsorship) is good for public relations and it also facilitates corporate social responsibility. Other companies with public tv affiliations are listed and this would indicate that the programming is worth corporate (\$) investment because of the number of viewers.

7. Bruce I. Christensen, President of PBS

Testimony gives an overview of the purposes and structure of Public Television for example he discusses: a) individual stations, b) program distribution and c) alternative programming. He also provides that the value of public tv cannot be measured by audience ratings and that PBS seeks out alternative programs and programming areas which the commercial tv does not serve.

8. Dale M. Rhodes, Executive Director of Research of the National Association of Public Television Stations

Testimony discusses a television audience survey and proceeds to legitimize the survey and concludes by stating that the survey showed that cable operators placed a high value on public television.

9. Peter S. Hoffman, Chairman of the Board and CEO of McHugh and Hoffman, Inc., Communications consultants

Testimony was to legitimize a research study relative to the carriage of public tv signals on cable systems that was requested by PBS. The survey shows that public tv as a unique and diverse program source and is a great value to signal carriers and their subscribers. The research also comes to five conclusions:

A. Virtually no cable system in the nation is without at least one public tv signal, either local or distant.

B. Cable operators place a high value on distant public tv signals for a variety of reasons, including the quality, nature and diversity of its programming, and the desires and interests of the cable subscribers and community leaders.

C. Many cable systems carry more than one public tv signal, and do not perceive duplication of programs to be a drawback to that carriage.

D. Cable operators regard public tv to be an essential alternative program service to the numerous available commercial tv services and cable networks.

E. Cable operators, when comparing the marketplace value of distant public tv signals vis-a-vis distant commercial tv signals, would allocate \$27 to \$33 out of \$100 to distant public signals.

DEVOTIONALS

1. David Clark, Vice President of Marketing of the Christian Broadcasting Network, Inc.

Testimony began with witnesses educational background and experience and then proceeded to provide an overview of the Devotional claimants direct case and the reasons they warrant a substantial award. Specifically, the following issues will be discussed:

A. The harm caused to Devotional claimants by secondary transmission of copyrighted works.

B. Benefits experienced by cable systems from the secondary transmission of copyrighted works.

C. Significant marketplace value of devotional programming.

D. High quality of programming

E. Presentation of programming that otherwise would not be available to the American public.

2. Paul Virts, Manager of Research Services for the CBN

Scope of the testimony will be the discussion of two studies concerning the benefit and value of religious programming and the reliability and legitimacy of the studies. The first study concerns the importance of religious programming in the cable executives decision to carry a particular distant signal. The second study determined that 25% of subscribers considered it very important or somewhat important to have religious programming available over distant cable channels.

3. E. Harold Munn, Jr., President of E. Harold Munn, Jr. and Associates, a consulting engineering firm

Scope of the testimony is to illustrate the great demand for religious programming. This is done by showing the decisions of a cable station in choosing which distant signals it would carry. The testimony also discusses how devotional programming should be measured; contributions received from viewers which range from one million to five million a week.

4. Victor C. Bosiger, President of Asset Investments, Inc., a media brokerage firm

Testimony concerns the witnesses belief that religious programming is very important. The witness states that this can be seen by the inundation of calls to a tv station when a program does not run. Secondly, it is illustrated by the negative comments toward programming that is not family or Christian-oriented. Thirdly, operators would still program religious shows even if they had to pay for it because they realize the value in it.

MUSIC

1. Edward M. Cramer, President and CEO of BMI

Scope is to provide a general overview of the importance of music to programming. Testimony also gives an understanding of how music interacts which other elements in creating program value. He proceeds to illustrate the contribution of music by showing a documentary called "The Score" which features 4 composers: Earl Hagen, Hugo Friedhofer, Lolo Schefrin and Quincy Jones.

2. Hal David, Songwriter, President of ASCAP

General background is given to show legitimacy as a witness and then the testimony discusses the number of scores and song written for movies/motion pictures. Attempts to show how valuable music is by showing how songs promoted such motion pictures as "Alfie", "New York, New York," and "Whats New Pussycat." The testimony illustrates numerous examples and discusses how songs are unique and normal. Because they are so unique and such a vital part of all films, Music claimants deserve a higher award.

3. Earl Hagen, Composer

Witness has composed over 2500 compositions for tv. Scope is to show the importance of music in programming and how music enhances the emotional content. Many examples of tv show themes are given such as "Andy Griffith", "I Spy," and "Mike Hammer." Witness also emphasizes that music is nonfungible.

4. Frank Lewin, Professional composer of film, television and theater scores

Scope is to show how music is combined with a motion picture. There is a presentation of 3 areas of music a film composer is responsible for:

A. Technical process from viewing of film to finished soundtrack.

B. Explanation of elements of musical language used by the composer.

C. Film showing how soundtrack is put together.

Like the previous witnesses there is an attempt to illustrate how important music is to the cable industry.

5. Don Biederman, Vice President of Legal and Business Affairs for Warner Brothers Music

Scope of testimony is to assert that creators and copyright owners of music are entitled to an increase in their share of cable license fees largely due to the growth of the music video industry. Mr. Biederman contends that music video revolutionized the industry and reversed the downward trend, and revitalized the record business. He presently believes that copyright owners are essentially squeezed out of receiving royalties even though they have heavily contributed to the resurgence of the industry, rise in new video shows and the success of many artists.

6. Paul Fagan, Retired ASCAP Director & Economist

Scope of testimony is to show that there is no objective measure to ascertain the value of music like the measure used to value tv programs (Nielsens). The increase of music videos shows that music has previously been undervalued. Utilizing the tv guide listing and other criteria it is computed that music is entitled to 6.25% of 1983 cable royalty fund (pg. 14).

7. Dennis Waters, President & Editor-in-Chief of Waters Information Service, Inc.

Testimony is for NPR and Music claimants to show the value of cable radio. He asserts that many cable franchises require that cable systems provide radio service and that there is growth in cable audio service. Subscribership has increased even though there is a separate monthly charge. These facts indicate that cable radio is important and valuable to the consumer and should be taken into consideration in determining the Music claimants award.

NATIONAL PUBLIC RADIO (NPR)

1. Douglas J. Bennet, President of NPR

Scope of testimony is to give an overview of NPR's reasons for wanting .5% award and to give short summaries of the other witnesses testimony. The testimony also discusses the value of NPR signals to cable systems, its quality, diversity of programming and the objective to meet the needs of its audience. Finally, it is stated that with diminishing government funding for public radio it is very critical for NPR to recover its fair share.

2. Dennis Waters, President & Editor-in-Chief of Waters Information Service Inc.

Testimony is for NPR and Music claimants to show the value of cable radio. He asserts that many cable franchises require that cable systems provide radio service and that there is growth in cable audio service. Subscription has increased even though there is a separate monthly charge. These facts indicate that cable radio is important and valuable to the consumer and should be taken into consideration in determining the Music claimants award.

3. Robert Siegel, Director of News & Information Programming for NPR

Scope of testimony concerns the high value of NPR because it provides news with full coverage of issues and events. NPR tries to create and prepare informative and entertaining news programming. NPR won seventeen broadcast awards in 1983 and "...has set a high standard of performance in the broadcasting industry, one that is unrivalled in radio and not often matched in television."

4. Cokie Roberts, Congressional Correspondent for NPR

Scope of testimony concerns the high value of NPR. This issue is illustrated by the indepth news reporting, longer news air time as opposed to commercial stations. She says that her colleagues are jealous of her flexibility to do indepth stories. There seems to be such a discrepancy in news reporting that she has turned down offers with commercial stations willing to pay 2 to 3 times the salary she had.

5. Verta Mae Grosvenor, Independent Radio Program Producer, Writer, & Poet, who has produced for NPR

Testimony also concerns the value of NPR and how it is meeting the needs of specialized audiences. Two programs are discussed, which won two awards, which she believes would not have been possible through commercial radio. The programs that are getting large audience response are filling a void left by commercial radio.

6. Dean Boal, Director of Arts and Performance Programs for NPR

Testimony concentrate on NPR music programming and how important it is to classical and jazz music enthusiasts. Gives reasons why NPR music programming is superior to commercial:

- a) NPR gives the audience full analysis of the classical music played,
- b) commercial has more breaks in the playing of music, whereas, can play pieces much longer without cutting them,
- c) NPR has many more stations that play classical and jazz music and
- d) NPR believes they have better quality sound and technology.

NATIONAL ASSOCIATION OF BROADCASTERS (NAB)1. Edward O. Fritts

The purpose of Mr. Fritts' testimony is to give a general overview of each of the six witnesses background and a synopsis of their individual testimony. He also states that the former Tribunal was wrong in not allocating any royalties to commercial radio broadcasters. Mr. Fritts believes that because of the efforts of broadcasters the radio stations have appeal in cable markets and deserve royalty compensation. He believes that what commercial radio stations do is valuable to listeners in distant cable communities as well as in their local areas

2. John Abel, NAB's Senior Vice President for Research and Planning

He will outline broadcasters' entire claim and discuss how that claim was calculated. In particular, he will present new comprehensive surveys of cable operators and cable subscribers. These surveys show that the marketplace value of station-produced programs to cable operators and subscribers is more than three times greater than 4.5 percent, the royalty award made in prior years. NAB believes that these surveys should be the starting point in making your allocations. Dr. Abel will also present evidence on NAB's compilation and radio claims.

3. Dr. Robert LaRose, Senior Vice President for Research of The ELRA Group

Dr. LaRose was the person responsible for conducting the cable operator and subscriber surveys which NAB is presenting. He will be able to answer your questions about how the surveys were conducted.

The next two witnesses will focus on a new and very important issue. The Tribunal for the first time was available for distribution royalties collected from the syndicated exclusivity surcharge. For the reasons described by these two distinguished witnesses, NAB believes that United States commercial broadcasters should receive the vast majority of these "syndex" royalties.

4. Professor Arthur Miller, Copyright Law Professor at Harvard Law School

He will discuss the application of the Copyright Act to the syndex royalties. He will explain why it is that broadcasters are the only claimants entitled to most of those royalties.

5. Harold Protter, Distinguished independent television station operator

He will describe how broadcasters have been harmed by repeal of the syndicated exclusivity rules. The syndex royalties have been collected, as the Tribunal knows, to compensate those who lost the protections previously provided by those rules. He will also testify about broadcasters' efforts in making "broadcast day" compilations.

6. Studs Terkel, Host of The Studs Terkel Show on WFMT for over 30 years

He will talk about his show and its appeal to cable subscribers across the country.

7. Raymond Nordstrand, President of WFMT

He will discuss cable carriage of WFMT, the programs it produces and broadcasts, and its overall programming service.

As a former radio broadcaster, I know that what commercial radio stations do is valuable to listeners in distant cable communities as well as in their local areas. The Court of Appeals quoted the testimony of Lee Abrams, one of the leading radio consultants in the country, that the formatting and other efforts of a radio station are a very important part of a station's appeal. WFMT is a good example of this point.

WFMT also illustrates the general point that large market radio stations often can afford to produce a "sound" that is more polished and professional than smaller market stations. When cable systems import radio stations from bigger markets, these bigger market stations have appeal in cable markets because of the efforts of broadcasters. They deserve royalty compensation.